

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

11 QUILLIE L. HARVEY, JR., ) Case No. 09cv0150-LAB (BLM)  
12 )  
12 v. Petitioner, ) **ORDER DENYING WITHOUT  
13 ) PREJUDICE PETITIONER'S MOTION  
13 FOR ASSIGNMENT OF COUNSEL**  
14 A. HEDGPETH, Warden, et al., )  
14 ) [Doc. No. 7]  
15 Respondents. )  
15 )  
16 )

17 On February 9, 2009, Petitioner Quillie Harvey, Jr., a state  
18 prisoner proceeding *pro se* and *in forma pauperis*, filed the Motion for  
19 Assignment of Counsel currently before the Court. Doc. No. 7.  
20 Petitioner contends that he requires appointed counsel because of the  
21 seriousness of his case and because he "has very little legal experience  
22 and knowledge of law." Id. at 3. Petitioner also claims that the  
23 prison lockdown and his limited access to the prison library have  
24 impaired his ability to prepare his case. Id. at 8. Having considered  
25 the request submitted by Petitioner and the applicable law, and for the  
26 reasons set forth below, Petitioner's Motion for Assignment of Counsel  
27 is **DENIED** without prejudice.

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1       The Sixth Amendment right to counsel does not extend to federal  
 2 habeas corpus actions by state prisoners. See McClesky v. Zant, 499  
 3 U.S. 467, 495 (1991); Nevius v. Sumner, 105 F.3d 453, 460 (9th Cir.  
 4 1996) (noting that there currently exists no constitutional right to  
 5 appointment of counsel in habeas proceedings); Chaney v. Lewis, 801 F.2d  
 6 1191, 1196 (9th Cir. 1986). However, courts may appoint counsel for  
 7 financially eligible habeas petitioners seeking relief pursuant to 28  
 8 U.S.C. § 2254 where "the interests of justice so require." 18 U.S.C.  
 9 § 3006A(a)(2)(B); Chaney, 801 F.2d at 1196. Whether or not to appoint  
 10 counsel is a matter left to the court's discretion, unless an  
 11 evidentiary hearing is necessary. See Knaubert v. Goldsmith, 791 F.2d  
 12 722, 728-30 (9th Cir. 1986) (explaining that the interests of justice  
 13 require appointment of counsel when the court conducts an evidentiary  
 14 hearing on the petition).

15       The court's discretion to appoint counsel may be exercised only  
 16 under "exceptional circumstances." Terrell v. Brewer, 935 F.2d 1015,  
 17 1017 (9th Cir. 1991). "A finding of exceptional circumstances requires  
 18 an evaluation of both the 'likelihood of success on the merits and the  
 19 ability of the petitioner to articulate his claims *pro se* in light of  
 20 the complexity of the legal issues involved.' Neither of these factors  
 21 is dispositive and both must be viewed together before reaching a  
 22 decision." Id. (quoting Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th  
 23 Cir. 1986)).

24       The Court has reviewed the Petition for Writ of Habeas Corpus  
 25 submitted by Petitioner in this case. Doc. No. 1. This filing belies  
 26 Petitioner's claims of an inability to understand the applicable law.  
 27 For example, in his Petition, Petitioner properly articulated a claim of  
 28 ineffective assistance of counsel under the Sixth Amendment. See id.

1 Petitioner provides a thorough and clear recitation of his claims, and  
 2 cites appropriate authority.<sup>1</sup> See id. Thus, the Court finds that  
 3 Petitioner not only has a sufficient grasp of his individual claims for  
 4 habeas relief and the issues involved in those claims, but also is able  
 5 to articulate those claims adequately without assistance. See LaMere v.  
 6 Risley, 827 F.2d 622, 626 (9th Cir. 1987) (affirming district court's  
 7 denial of request for appointment of counsel where pleadings  
 8 demonstrated petitioner had "a good understanding of the issues and the  
 9 ability to present forcefully and coherently his contentions"). The  
 10 Court also finds that while Petitioner has asserted sufficient facts to  
 11 state a claim for federal habeas relief, he has not established a  
 12 likelihood of success on the merits. See Terrell, 935 F.2d at 1017.  
 13 Under these circumstances, the Court concludes that this habeas  
 14 proceeding does not present "exceptional circumstances" justifying the  
 15 appointment of legal counsel. Id. Accordingly, Petitioner's Motion for  
 16 Assignment of Counsel is **DENIED** without prejudice.

17 **IT IS SO ORDERED.**

18 DATED: February 23, 2009

19  
 20 BARBARA L. MAJOR  
 21 United States Magistrate Judge  
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28 <sup>1</sup> Because of Petitioner's demonstrated ability to cite proper authority and  
 clearly present his claims, the Court finds that the prison lockdown and his limited  
 library access have not impaired Petitioner's ability to litigate this case thus far.